

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LAMAR ROWELL

| Case No. 3:10-cv-00044-RCJ-VPC

**Petitioner,**

## ORDER

v.

NEVADA, STATE OF et al.,

## Respondents.

14 On March 21, 2011, this court denied petitioner Lamar Rowell's *pro se* habeas  
15 corpus petition on the merits, and judgment was entered (ECF Nos. 33, 34). Rowell  
16 appealed, and the Ninth Circuit denied a certificate of appealability (ECF Nos. 35, 38).

17 On June 2, 2011, Rowell filed a motion to set aside judgment for fraud on the  
18 court, this court denied the motion, and the Ninth Circuit denied a certificate of  
19 appealability (ECF Nos. 39, 43, 49).

On December 11, 2013, Rowell filed a motion to set aside judgment, this court denied the motion, and the Ninth Circuit denied a certificate of appealability (ECF Nos. 50, 52, 56).

Now before the court are Rowell's motion for leave to amend petition and to vacate the judgment, motion for evidentiary hearing, and motion for judicial notice of fraud on the court, filed almost six years after judgment was entered and this case was closed (ECF Nos. 58, 59, 63). He now claims that he was improperly adjudicated a habitual criminal because he is actually innocent of having three prior felony convictions. This is a new claim that the same judgment of conviction violated his

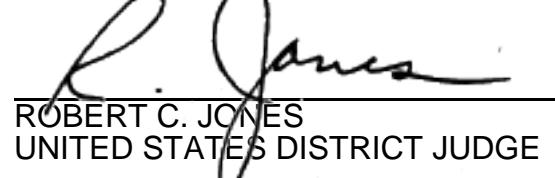
federal constitutional rights. Thus, the purported motion for leave to amend and to vacate the judgment is in reality a successive petition. 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

Rowell's frivolous motions are denied as a successive petition. Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the court will not issue a certificate of appealability.

**IT IS THEREFORE ORDERED** that petitioner's motion for leave to amend and to vacate judgment (ECF No. 58), motion for evidentiary hearing (ECF No. 59), and motion or judicial notice of fraud on the court (ECF No. 63) are all **DENIED**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

DATED: June 14, 2017



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ROBERT C. JONES  
UNITED STATES DISTRICT JUDGE